

OCHOA

PART 1

1 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

3 IN RE: ADAMS GOLF, INC. :  
4 SECURITIES LITIGATION :

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23  
24

		Page 10			Page 12
1	other conversations after that.	09:41:16	1	MR. COLLINS: Foundation.	09:43:07
2	Q. In any of those -- well, strike that.	09:41:17	2	Go ahead.	09:43:08
3	When Mr. Collins re-contacted you	09:41:25	3	BY THE WITNESS:	09:43:25
4	in the summer of this year and you were entertaining	09:41:28	4	A. I have -- my sister-in-law is -- has	09:43:26
5	the thought of becoming an expert for the plaintiffs	09:41:31	5	some experience in litigation, complex litigation.	09:43:29
6	in this case, did you have to seek permission or	09:41:34	6	And I spoke with her about my qualifications -- I	09:43:31
7	consult with anybody at the university about whether	09:41:38	7	spoke with my sister-in-law who has some litigation	09:43:31
8	you could do that or not?	09:41:41	8	experience about her knowledge of expert witnesses	09:43:32
9	A. I don't think I actually had to seek	09:41:41	9	and the kinds of qualifications they have and need	09:43:36
10	permission, but I did check to see whether I had to	09:41:44	10	to have, and my qualifications relative to this	09:43:40
11	seek permission. I spoke with my -- with the	09:41:44	11	case.	09:43:43
12	associate dean at my law school. The dean at my law	09:41:44	12	BY MR. BESSETTE:	09:43:43
13	school was out of town and he made clear to me that	09:41:49	13	Q. What is your sister-in-law's	09:43:43
14	it wasn't necessary to speak with her as well. I	09:41:50	14	experience in litigation?	09:43:46
15	asked him what the issues -- what the constraints	09:41:53	15	A. She was a litigator at I believe at	09:43:46
16	were on my serving as an expert, and he gave me	09:41:57	16	Cooley Godward in Palo Alto and was a litigator	09:43:49
17	those constraints.	09:42:00	17	there.	09:43:56
18	Q. Now, you had not served as an expert	09:42:02	18	Q. Is she a litigator now?	09:43:56
19	witness in any sort of litigation prior to this	09:42:05	19	A. She is not. She transferred to a	09:43:58
20	engagement, is that right?	09:42:09	20	different firm and that does -- she sort of retooled	09:44:03
21	A. That's correct.	09:42:09	21	herself and now she does trust and estates	09:44:04
22	Q. Were you concerned during the process	09:42:10	22	Q. Okay. What is her name?	09:44:04
23	of talking with Mr. Mara or Mr. Collins about	09:42:11	23	A. Her name is Julie Lanz.	09:44:05
24	whether you would qualify as an expert witness?	09:42:14	24	Q. What were -- what do you understand	09:44:06
		Page 11			Page 13
1	A. I wanted to make sure that the	09:42:17	1	you were asked to opine on or to be an expert on in	09:44:13
2	qualifications that I do possess were adequate and	09:42:19	2	this case?	09:44:16
3	sufficient for their needs.	09:42:21	3	A. Characteristics of the gray market and	09:44:17
4	Q. How did you do that?	09:42:23	4	specifically how they applied to Adams Golf.	09:44:21
5	A. I made sure that they were entirely	09:42:24	5	Q. Anything more specific or is that what	09:44:24
6	aware of the entirety of my knowledge of the gray	09:42:27	6	you understood your assignment was?	09:44:26
7	market, my expertise in the gray market, and my	09:42:31	7	A. That was essentially my assignment.	09:44:28
8	expertise in other matters as well, and let them	09:42:34	8	Q. Okay. Now, let me ask you to -- well,	09:44:30
9	make their decision about that.	09:42:37	9	actually, let me give you all of these. The court	09:44:34
10	Q. Did you express concern to the	09:42:39	10	reporter has marked these exhibits as 303, 304 and	09:44:37
11	assistant dean or anybody at the university when you	09:42:44	11	305, and I believe they are your expert report in	09:44:44
12	were inquiring about the constraints about whether	09:42:47	12	the case, your rebuttal expert report, and then the	09:44:48
13	or not you qualified as an expert?	09:42:49	13	expert report of Mr. Gary Frazier in order.	09:44:51
14	MR. COLLINS: Foundation.	09:42:52	14	Does that look to be the case?	09:44:57
15	You may answer.	09:42:52	15	A. Yes.	09:44:58
16	BY THE WITNESS:	09:42:53	16	Q. And I know you are familiar with your	09:44:58
17	A. No	09:42:54	17	expert reports. Are you familiar with Exhibit, I	09:45:01
18	BY MR. BESSETTE:	09:42:54	18	guess, 305, which is Mr. Frazier's?	09:45:06
19	Q. Did you consult with anybody -- other	09:42:54	19	A. Yes.	09:45:08
20	than the plaintiffs in this case, Mr. Collins or Mr.	09:42:57	20	Q. Okay. Turning to -- whether it's page	09:45:09
21	Mara, about whether -- well, did you express to	09:42:59	21	1 of Exhibit 303, your report, or Exhibit A, your	09:45:45
22	anybody, other than Mr. Collins or Mr. Mara,	09:43:01	22	resume, whichever you would like, but I want to ask	09:45:51
23	thoughts about whether you qualified as an expert in	09:43:04	23	some questions about your qualifications, background	09:45:55
24	this case?	09:43:07	24	and experience	09:45:57

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1	You are currently an associate	09:45:59	1	of that course with that section in it was on the	09:48:06
2	professor of law at Indiana University School of	09:46:00	2	internet and that's how the plaintiff's lawyers	09:48:08
3	Law?	09:46:04	3	found you?	09:48:10
4	A. That's correct.	09:46:04	4	A. That's what I understand.	09:48:11
5	Q. And as I understand it, you say in the	09:46:05	5	Q. Okay. Now, explain to me, this course	09:48:12
6	report or in your resume that your duties are	09:46:07	6	that you teach, international business transactions,	09:48:13
7	divided into three sort of buckets or categories?	09:46:10	7	is that a course for one semester?	09:48:17
8	A. Yes.	09:46:13	8	A. Yes.	09:48:20
9	Q. Okay. Would you tell me what those	09:46:13	9	Q. And this is at the law school?	09:48:20
10	are, please?	09:46:15	10	A. Correct.	09:48:23
11	A. Those are teaching, research and	09:46:15	11	Q. Which level of student?	09:48:23
12	service.	09:46:17	12	A. Upper level students.	09:48:26
13	Q. Okay. What are your primary duties	09:46:17	13	Q. So second and third years?	09:48:28
14	with respect to the research prong of your duties?	09:46:21	14	A. Correct. And also graduate students.	09:48:30
15	A. To research and publish my work.	09:46:23	15	Q. What are the -- I mean, is there a	09:48:33
16	Q. And what work?	09:46:33	16	textbook or multiple textbooks that you use to teach	09:48:40
17	A. I guess I am curious about what you	09:46:34	17	that class?	09:48:43
18	mean by what work.	09:46:42	18	A. I teach from one textbook.	09:48:44
19	Q. I just want to understand what you	09:46:42	19	Q. Which one is that?	09:48:49
20	meant, research and publish your work	09:46:44	20	A. It's Folsom, Gordon and Spanogle	09:48:50
21	A. Yeah. It is law professors typically	09:46:44	21	International Business Transaction. Folsom is	09:48:59
22	write legal scholarship articles, they are published	09:46:47	22	F-o-l-s-o-m, Gordon is Gordon, and Spanogle I	09:48:59
23	in various law journals, as well as other locations	09:46:51	23	believe is S-p-a-n-g -- S-p-a-n-o-g-l-e.	09:49:17
24	And we are expected to produce in that way	09:46:55	24	Q. And is there one or more chapters in	09:49:17
		Page 15			Page 17
1	Q. How many articles have you published?	09:46:57	1	that textbook that deals with gray marketing?	09:49:26
2	A. I don't remember right now. It is on	09:47:01	2	A. There is one chapter that deals with	09:49:29
3	my resume. It is five and a book review.	09:47:05	3	counterfeiting and gray marketing. Let me rephrase	09:49:33
4	Q. Now, in the teaching category, if I	09:47:10	4	There are chapters in the book, the chapters are	09:49:36
5	understand this right, you teach international	09:47:20	5	divided into what the authors call problems or	09:49:39
6	business transactions as one of the courses?	09:47:24	6	sections, and one of those is devoted to gray	09:49:41
7	A. Yes.	09:47:26	7	marketing and counterfeiting.	09:49:45
8	Q. I guess there is five courses, is that	09:47:26	8	Q. Okay. And how extensive is that	09:49:47
9	right?	09:47:30	9	section or chapter? In other words, how many pages?	09:49:50
10	A. That's correct.	09:47:30	10	MR. COLLINS: The document speaks for	09:49:51
11	Q. And international business	09:47:30	11	itself, and as you know, was produced	09:49:53
12	transactions, in that course, I understand there is	09:47:35	12	BY THE WITNESS:	09:49:56
13	a section devoted to counterfeits and gray market	09:47:38	13	A. I don't remember exactly the page	09:49:57
14	activity, including in the golf industry?	09:47:42	14	length.	09:49:58
15	A. Correct, yes	09:47:45	15	BY MR. BESSETTE:	09:49:59
16	(Off the record	09:47:45	16	Q. Did you select that course book for	09:49:59
17	discussion.)	09:47:45	17	that class?	09:50:01
18	BY MR. BESSETTE:	09:47:48	18	A. I did.	09:50:01
19	Q. International business transactions	09:47:48	19	Q. How did you select that? What was	09:50:02
20	has a section devoted to counterfeits and gray	09:47:55	20	your criteria?	09:50:04
21	marketing including in the golf industry, is that	09:47:59	21	A. I used a few criteria. I selected	09:50:05
22	right?	09:48:03	22	it -- I taught international business transactions	09:50:09
23	A. That's correct.	09:48:03	23	the first year that I taught at the law school, and	09:50:12
24	Q. And you understand that that syllabus	09:48:03	24	went through a process that a new professor	09:50:16

<p style="text-align: right;">Page 18</p> <p>1 typically goes through in selecting a course book 09:50:20      2 and choosing that one. 09:50:23      3 Q. Okay. And would you just explain for 09:50:25      4 the jury what that process is? 09:50:26      5 A. Sure. That process includes reviewing 09:50:27      6 the world of possible international business 09:50:30      7 transactions textbooks, looking at them seeing which 09:50:34      8 ones has materials that you think are presented 09:50:39      9 clearly, neatly, in a way that is well organized, 09:50:41      10 easy to understand and will capture the students' 09:50:44      11 attention. 09:50:44      12 In addition, I spoke with other 09:50:51      13 professors who I knew had taught in the area before 09:50:53      14 and asked them about their experiences in teaching 09:50:55      15 international business transactions and the 09:50:59      16 textbooks that they had used and the problems and 09:51:01      17 the benefits that they had encountered with each of 09:51:02      18 them 09:51:07      19 Q. Now, only one section in that course 09:51:08      20 book is devoted to gray marketing. Do I have that 09:51:10      21 right? 09:51:15      22 A. Yes 09:51:15      23 Q. And do the materials in that section 09:51:15      24 deal with the golf industry exclusively or just sort 09:51:18</p>	<p style="text-align: right;">Page 20</p> <p>1 A. They have been changed over the course 09:52:19      2 of the time that I have taught the class. I have 09:52:21      3 now taught the class three times. Each year I 09:52:24      4 believe they have been slightly different, those 09:52:26      5 materials have been slightly different. So in 09:52:29      6 preparation for teaching each year, I reevaluate 09:52:32      7 and -- I reevaluate the materials I have used before 09:52:35      8 and add or subtract materials that were included 09:52:39      9 Q. So the course book itself doesn't have 09:52:42      10 a section on gray materials as it deals with the 09:52:44      11 golf industry, it is the supplemental materials. Do 09:52:47      12 I understand that right? 09:52:50      13 A. It is has a section on the gray 09:52:50      14 market. It does not have a section on the gray 09:52:53      15 market in relation to the golf industry 09:52:56      16 Q. Okay. And when you first started 09:52:58      17 teaching, is it your understanding that in the first 09:53:00      18 year, which I guess we'll get to here, '03 maybe, 09:53:03      19 you provided supplemental materials that focused on 09:53:05      20 gray marketing in the golf industry? 09:53:08      21 MR. COLLINS: Asked and answered. 09:53:10      22 Go ahead 09:53:12      23 BY THE WITNESS: 09:53:13      24 A. In the first year that I taught the 09:53:13</p>
<p style="text-align: right;">Page 19</p> <p>1 of mention it? 09:51:24      2 MR. COLLINS: I am sorry. I think you 09:51:25      3 are misunderstanding some of the thrust of the 09:51:27      4 testimony here, but -- so therefore, I object on 09:51:30      5 grounds that you mangled the testimony 09:51:35      6 Go ahead and answer 09:51:37      7 BY THE WITNESS: 09:51:39      8 A. There are, in the textbook itself, 09:51:40      9 there is no -- I believe no mention of the golf 09:51:43      10 industry at all. It is my supplemental materials 09:51:47      11 that include that. 09:51:49      12 BY MR. BESSETTE: 09:51:50      13 Q. Okay. What supplementary materials 09:51:50      14 are those? 09:51:51      15 A. Every year in addition to the textbook 09:51:52      16 I assign a course packet of supplemental materials 09:51:55      17 that I believe are particularly useful in 09:51:59      18 illucidating particular topics, and I chose some 09:52:07      19 materials on the gold industry and the golf 09:52:08      20 equipment industry in particular in the presentation 09:52:08      21 of counterfeiting and gray marketing material. 09:52:11      22 Q. And when did you add those 09:52:12      23 supplementary materials, the particular ones on the 09:52:16      24 golf industry? 09:52:19</p>	<p style="text-align: right;">Page 21</p> <p>1 course, I did include those materials, yes. 09:53:16      2 BY MR. BESSETTE: 09:53:18      3 Q. I'm sorry, you did? 09:53:18      4 A. I did include those materials, yes. 09:53:18      5 Q. Okay. Now, where did you find those 09:53:19      6 materials? 09:53:20      7 MR. COLLINS: And we're asking 09:53:23      8 specifically with regard to the first year? 09:53:24      9 MR. BESSETTE: Right. 09:53:26      10 BY THE WITNESS: 09:53:26      11 A. The first year that I taught the 09:53:27      12 class, again, I followed pretty standard practice 09:53:29      13 for new professors. I used materials that a person 09:53:32      14 who had taught international business transactions 09:53:39      15 introduced me to 09:53:42      16 BY MR. BESSETTE: 09:53:43      17 Q. And the supplemental materials that 09:53:43      18 you used starting in '03 and continuing to the 09:53:45      19 present have been produced? 09:53:48      20 A. Yes. I believe. And materials that I 09:53:49      21 taught the last time that I taught have been 09:53:52      22 produced. 09:53:55      23 Q. Do you have in your possession the 09:53:56      24 materials starting from the first time you taught to 09:53:59</p>

	Page 22		Page 24
1 the present? 09:54:01		1 classroom, would be to give students enough material 09:55:26	
2 A. I may. I'm not sure. 09:54:01		2 that they have a good basis for discussion. And 09:55:30	
3 Q. All right. Could you do a search for 09:54:03		3 then I will come to the class with additional 09:55:32	
4 us and if you have them, would you produce them with 09:54:04		4 information, additional materials to make for 09:55:34	
5 counsel's permission? 09:54:08		5 interesting classroom experience, as well as 09:55:39	
6 MR. COLLINS: Well, we will take it 09:54:08		6 interesting reading 09:55:42	
7 under advisement. What you are asking for is the 09:54:09		7 So I'm not really -- I don't 09:55:43	
8 materials from the first year and the second year, 09:54:13		8 remember entirely whether the topics specifically 09:55:45	
9 to the extent they are different from the materials 09:54:15		9 asked about are contained in the written materials 09:55:48	
10 for the third year, which I believe have been 09:54:18		10 or whether they are contained in my head when I walk 09:55:51	
11 produced? 09:54:21		11 into the classroom. 09:55:55	
12 MR. BESSETTE: Yes 09:54:21		12 BY MR. BESSETTE: 09:55:57	
13 BY MR. BESSETTE: 09:54:23		13 Q. But as you sit here, it is your 09:55:57	
14 Q. And I believe your testimony was you 09:54:23		14 understanding that whether in the written materials 09:55:59	
15 kind of look to change and look to update. So if 09:54:25		15 or in your head, your class deals with the financial 09:56:01	
16 you have materials from '03 or prior years before 09:54:28		16 and economic consequences of the gray market to 09:56:03	
17 the ones you produced that are different than the 09:54:31		17 manufacturers? 09:56:07	
18 ones you produced, I would like to see those. 09:54:33		18 A. Yes. 09:56:07	
19 MR. COLLINS: We will take it under 09:54:34		19 Q. Okay. And if it is not in the written 09:56:08	
20 advisement. 09:54:36		20 materials, where did you get the source material for 09:56:11	
21 BY MR. BESSETTE: 09:54:36		21 that information? 09:56:14	
22 Q. Do the materials either in the 09:54:37		22 A. From a variety of sources. One place 09:56:15	
23 textbook or the supplemental materials deal with the 09:54:38		23 is through -- let me back up. In preparing for 09:56:17	
24 economic and financial consequences of gray markets 09:54:42		24 class, in addition to obviously reading the 09:56:21	
	Page 23		Page 25
1 on manufacturers, do you know? 09:54:46		1 materials that I have asked my students to read, I 09:56:24	
2 MR. COLLINS: The documents speak for 09:54:48		2 also do additional reading. And in the course of 09:56:27	
3 themselves. 09:54:50		3 the time that I have been teaching at IU, I have 09:56:31	
4 Go ahead 09:54:51		4 read countless scholarly articles that supplement 09:56:35	
5 BY THE WITNESS: 09:54:51		5 the materials that I teach. 09:56:39	
6 A. Could you ask the question again? 09:54:52		6 Q. Countless scholarly articles, is that 09:56:43	
7 Sorry. 09:54:53		7 what you said? 09:56:47	
8 BY MR. BESSETTE: 09:54:53		8 A. Yes. 09:56:47	
9 Q. Yeah. 09:54:53		9 Q. Do you know any off the top of your 09:56:47	
10 Do the supplemental materials -- 09:54:54		10 head? 09:56:51	
11 well, actually, strike that 09:54:54		11 MR. COLLINS: With regard to gray 09:56:51	
12 Do the materials on gray 09:54:56		12 marketing? 09:56:52	
13 marketing, whether in the textbook or the 09:54:57		13 MR. BESSETTE: Yes. 09:56:53	
14 supplemental materials, deal with the economic and 09:54:59		14 BY THE WITNESS: 09:56:53	
15 financial consequences of the gray market on 09:55:02		15 A. Yeah, sure. Some of them were cited 09:56:54	
16 manufacturers? 09:55:07		16 in my reports and are in the records 09:56:56	
17 MR. COLLINS: Same objection. 09:55:07		17 BY MR. BESSETTE: 09:56:56	
18 Go ahead. 09:55:08		18 Q. Well, go ahead and turn to page I 09:56:59	
19 BY THE WITNESS: 09:55:08		19 guess 3 and 4 of your report where you cite eight 09:57:00	
20 A. I don't actually know whether the 09:55:09		20 articles related to gray marketing that you -- well, 09:57:05	
21 materials themselves contain that or whether that is 09:55:10		21 strike that 09:57:05	
22 part of the class that I bring out during class 09:55:13		22 You cite eight articles related to 09:57:10	
23 discussion. So to clarify, often in preparing for a 09:55:16		23 gray marketing. I take it you reviewed those 09:57:13	
24 class, a professor, or at least in my strategy in a 09:55:23		24 articles which -- in the process of your work in 09:57:15	

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1	this case?	09:57:18	1	A.	That's correct 09:59:13	
2	A Yes	09:57:18	2	Q.	Do you teach courses in marketing? 09:59:14	
3	Q Did you review any other academic articles on gray marketing in your work in this case	09:57:19 09:57:23	3	A.	No. 09:59:16	
4	that you have not listed here?	09:57:27	4	Q.	Have you ever taught a course in 09:59:16	
5	A. No, I don't think so. Let me actually rephrase. After receiving Mr. Frazier's report, I	09:57:28 09:57:32	5	marketing?	09:59:18	
6	also reviewed the articles that he submitted that were not on this list.	09:57:38 09:57:42	6	A.	No. 09:59:19	
7	Q Okay So prior to receiving his report, you didn't review anything more than the eight articles in your report?	09:57:43 09:57:45 09:57:48	7	Q.	Have you ever taken a course in 09:59:19	
8	MR. COLLINS: In connection with this case?	09:57:49 09:57:51	8	marketing?	09:59:21	
9	MR. BESSETTE: Yes.	09:57:51	9	A.	That's thinking back a long ways. I 09:59:22	
10	BY THE WITNESS:	09:57:52	10	don't think so.	09:59:27	
11	A. Correct	09:57:53	11	Q.	Have you ever published a paper on 09:59:27	
12	BY MR. BESSETTE:	09:57:53	12	gray marketing?	09:59:30	
13	Q Okay How did you -- what search did you undertake to decide on these eight articles to review?	09:57:53 09:57:54 09:57:58	13	A.	No. 09:59:31	
14	A I did -- I went through the process that I often go through in performing my research. I got online, I looked at our library's holdings, I	09:57:58 09:58:01 09:58:05	14	Q.	Have you ever published an article or book on gray marketing? 09:59:31 09:59:33	
15	MR. COLLINS: Foundation. Go ahead.	09:58:27 09:58:28	15	A.	No. 09:59:35	
16	BY THE WITNESS:	09:58:28	16	Q.	Have you ever given a presentation on gray marketing? 09:59:35 09:59:37	
17	A I tried to find articles that I thought were useful and pertinent.	09:58:23 09:58:20 09:58:20	17	MR. COLLINS: Outside the class work that she has described?	09:59:38 09:59:41	
18	Q Why did you exclude some and include these eight?	09:58:23 09:58:27	18	MR. BESSETTE: Yeah.	09:59:43	
19	MR. COLLINS: Foundation. Go ahead.	09:58:27 09:58:28	19	By MR. BESSETTE:	09:59:43	
20	BY THE WITNESS:	09:58:28	20	Q.	I am not viewing teaching law students as a presentation. That's your profession.	09:59:45 09:59:48
21	A I tried to find articles that I thought were useful and pertinent.	09:58:30				
22	thought specifically dealt with the questions that I was asked to address, the types of profiles that make a business particularly susceptible to gray marketing, and also the kinds of impacts that gray marketing can have on a business.	09:58:32 09:58:34 09:58:39 09:58:43 09:58:46				
23	BY MR. BESSETTE:	09:58:48				
24	Q In your review that produced the eight articles that are listed in your report, do you recall whether you reviewed any of the articles that you saw listed in Mr. Frazier's report, Exhibit 305?	09:58:48 09:58:51 09:58:53 09:58:55				
25	A. No, I don't think I did	09:59:01				
26	Q To the best of your knowledge, in your search for articles related to gray marketing, you didn't come across any of the ones Mr. Frazier listed?	09:59:03 09:59:07 09:59:10 09:59:13				

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1	gray marketing?	10:00:50	1	Q. And then joined the faculty at Indiana
2	MR. COLLINS: Same objection.	10:00:50	2	University School of Law in June 2003?
3	BY MR. BESSETTE:	10:00:52	3	A. Correct.
4	Q. Whether in your life as a lawyer in	10:00:52	4	Q. Okay. What did you do between that --
5	practice, doing research about it, studying it in	10:00:55	5	or in that time period?
6	school, I mean, anything related to gray marketing	10:01:00	6	A. My husband and I who had decided --
7	Did you have any concept of what gray marketing was?	10:01:03	7	decided together that we wanted to leave our law
8	MR. COLLINS: Compound, vague and	10:01:06	8	firms in New York, and wanted to leave New York as
9	ambiguous.	10:01:09	9	well. We bought a pickup truck and drove around the
10	BY THE WITNESS:	10:01:10	10	country for a year or a little bit over a year. We
11	A. Yeah, there were a lot of questions in	10:01:11	11	got married in the middle of that period. We drove
12	what you asked. The contact that I would say I had	10:01:12	12	from the Florida Keys to the Arctic Circle, and
13	most with gray marketing before I became a professor	10:01:16	13	everywhere in between.
14	is as a consumer.	10:01:19	14	Q. Wow. Sounds interesting
15	BY MR. BESSETTE:	10:01:20	15	A. And slept in the back of the pickup
16	Q. Okay. Nothing beyond being a	10:01:20	16	truck.
17	consumer?	10:01:23	17	Q. That's interesting.
18	A. I don't believe so	10:01:24	18	A. In addition, then we settled in San
19	Q. Now, prior to joining I guess Indiana	10:01:33	19	Diego for a year where I was looking for my academic
20	University faculty, you were an attorney, is that	10:01:45	20	job.
21	right?	10:01:48	21	Q. Okay. Now, let's see. You graduated
22	A. Correct.	10:01:48	22	from law school in June 1998?
23	Q. Well, strike that.	10:01:57	23	A. Correct.
24	You worked as an attorney?	10:01:58	24	Q. So as we sit here today, you have been
		Page 31	Page 33	
1	A. Yes.	10:01:59	1	a lawyer for I guess eight years?
2	Q. All right. Did you ever represent a	10:02:00	2	A. Yeah.
3	party in a matter involving gray marketing as an	10:02:02	3	Q. Are you currently admitted to the New
4	attorney?	10:02:06	4	York Bar?
5	A. No. Actually, can you ask that	10:02:06	5	A. Yes.
6	question again? I'm not --	10:02:10	6	Q. Okay. When were you first admitted to
7	Q. Sure.		7	the New York Bar?
8	A. -- I need to think about it again.		8	A. I was admitted -- oh, boy, I don't
9	MR. BESSETTE: Go ahead and just		9	remember. What does it say? Let me look
10	repeat it.		10	Q. It doesn't say, that's --
11	(Record read.)		11	A. Oh, yeah?
12	MR. COLLINS: I'm sorry. I should	10:02:20	12	Q. Or at least I didn't see it
13	have objected on grounds of vague and ambiguous.	10:02:20	13	A. It was -- so I went to Columbia. I
14	You might want to clean it up just a touch. I	10:02:24	14	came back and was then admitted. So it must have
15	mean --	10:02:24	15	been 2000 by the time the admission ceremony
16	MR. BESSETTE: Let me ask it again.	10:02:26	16	actually took place.
17	BY MR. BESSETTE:	10:02:26	17	Q. Okay. You graduated in June 1998 from
18	Q. Did you ever represent a party in a	10:02:27	18	Harvard, is that right?
19	matter involving gray marketing?	10:02:30	19	A. Correct.
20	A. Okay. No.	10:02:32	20	Q. Did you take the bar that summer?
21	Q. Now, if I am reading your resume	10:02:37	21	A. I did take the bar that summer.
22	right, you last worked at Clifford Chance in	10:02:40	22	Q. The New York Bar?
23	April 2001, is that right?	10:02:44	23	A. Yes.
24	A. Correct.	10:02:45	24	Q. Did you pass it?

	Page 34		Page 36
1 A. No.	10:04:46	1 University	10:07:13
2 Q. And then what did you do?	10:04:46	2 Q. Can you explain for me marketing as a	10:07:13
3 A. I was planning to go to Columbia	10:04:47	3 discipline in academia and business?	10:07:16
4 already. I went to Columbia. I worked there at a	10:04:51	4 MR. COLLINS: Outside the scope of the	10:07:20
5 law school and also in a human rights organization	10:04:55	5 opinion.	10:07:22
6 in Bogota, Columbia. While I was there, I also came	10:04:59	6 BY THE WITNESS:	10:07:22
7 back to take the bar again, passed it and then was	10:05:01	7 A. It's not my area of expertise	10:07:23
8 admitted.	10:05:04	8 BY MR. BESSETTE:	10:07:23
9 Q. Okay. And the second time you took	10:05:05	9 Q. What is not?	10:07:25
10 the bar was in 2000?	10:05:06	10 A. Marketing.	10:07:26
11 A. No. it was in 1999 February.	10:05:08	11 Q. Okay. So do you acknowledge you are	10:07:27
12 Q. The next year, 1999, okay	10:05:12	12 not an expert in marketing?	10:07:32
13 A. Correct. The next available time	10:05:13	13 A. In marketing generally?	10:07:33
14 Q. Again, the New York Bar?	10:05:15	14 Q. Yes.	10:07:35
15 A. Yes.	10:05:17	15 A. Yes.	10:07:35
16 Q. And passed it that time?	10:05:18	16 Q. So you view gray marketing as	10:07:36
17 A. Yes	10:05:19	17 something different than marketing generally?	10:07:40
18 Q. And then what did you do after passing	10:05:20	18 A. Yes.	10:07:42
19 the bar in terms of working?	10:05:26	19 Q. Can you explain that to me?	10:07:42
20 A. I was already in Columbia, committed	10:05:28	20 A. Sure. The reason I teach gray	10:07:44
21 to working there for a year. And I fulfilled that	10:05:30	21 marketing in my class, the reason I believe that the	10:07:47
22 obligation. and then came back to the offer that I	10:05:34	22 authors of my book have included it in a book on	10:07:50
23 had open for my law firm, Clifford Chance, and began	10:05:37	23 international business transactions is because the	10:07:52
24 working as I had agreed with them before I went to	10:05:41	24 gray market can have significant impact on a	10:07:56
Page 35			
1 Columbia	10:05:44	1 business. And as a result, both I and the authors	10:07:59
2 Q. Okay. So through July 1999 at	10:05:46	2 of the book I would expect, though I don't know	10:08:02
3 Columbia. and then started back at Clifford Chance	10:05:49	3 their exact reasoning, believe that students who are	10:08:05
4 in September '99 then, is that right?	10:05:53	4 holding themselves out as particularly knowledgeable	10:08:09
5 A. That's correct	10:05:54	5 about international business transactions ought to	10:08:12
6 Q. When did you decide you wanted to, you	10:05:55	6 have some background in gray marketing.	10:08:16
7 know, go into teaching, being a law professor?	10:06:01	7 (Off the record	10:08:16
8 A. It is hard to remember when I didn't	10:06:03	8 discussion )	10:08:16
9 think I might be a teacher. I think I finally	10:06:06	9 BY MR. BESSETTE:	10:08:28
10 ultimately decided that I wanted to go into	10:06:10	10 Q. So I take it if I asked you what is	10:08:28
11 academia -- well, no. Let me rephrase. That I	10:06:15	11 commonly known as the four Ps of marketing, you	10:08:43
12 wanted to be a law professor during the trip that my	10:06:17	12 wouldn't know what they were?	10:08:47
13 husband and I took in 2001 and 2002	10:06:21	13 A. No.	10:08:48
14 Q. Okay. When -- Professor, when do you	10:06:33	14 Q. Okay. Let me ask you, do you think	10:08:48
15 believe you became knowledgeable about the gray	10:06:44	15 holding yourself out as an expert in gray marketing	10:08:51
16 market, gray marketing, I should say?	10:06:47	16 without having any background knowledge or	10:08:55
17 A. What do you mean by knowledgeable?	10:06:50	17 specialized experience in marketing generally, you	10:08:59
18 Q. Beyond a consumer, beyond somebody	10:06:52	18 can feel comfortable that you are an expert in gray	10:09:03
19 just being a consumer, but having specialized	10:06:56	19 marketing without having that marketing generally	10:09:06
20 knowledge about gray marketing. When do you think	10:07:01	20 background?	10:09:10
21 you attained that specialized knowledge?	10:07:03	21 MR. COLLINS: I think you are calling	10:09:11
22 A. My knowledge in the area has been	10:07:03	22 for a legal opinion.	10:09:12
23 evolving, has been developing over the course of the	10:07:06	23 MR. BESSETTE: No, I am not.	10:09:14
24 last three years as I have been teaching at Indiana	10:07:09	24 MR. COLLINS: What do you mean by	10:09:15

10 (Pages 34 to 37)

		Page 38			Page 40
1	expert then?	10:09:16	1	BY MR. BESSETTE:	10:11:28
2	MR. BESSETTE: All right. Let me withdraw the question.	10:09:17	2	Q To do that, you are sitting here today as an expert in gray marketing in connection with this case. When do you believe you first acquired the requisite knowledge and expertise to sit in this chair today and offer testimony as an expert in gray marketing?	10:11:30 10:11:32 10:11:37 10:11:39 10:11:42 10:11:49
3		10:09:17	3		
4	BY MR. BESSETTE:	10:09:17	4		
5	Q Let me ask you this: You are here today as an expert in gray marketing. Do I understand that right?	10:09:38 10:09:41 10:09:50	5		
6		10:09:41	6		
7		10:09:50	7		
8	A Yes.	10:09:52	8	MR. COLLINS: You may answer.	
9	Q And that expertise has been developed over the last three years in connection with your teaching duties at the Indiana University School of Law?	10:09:52 10:09:55 10:09:58	9	BY THE WITNESS:	
10		10:09:55	10	A To offer testimony in this case as an expert in gray marketing?	
11		10:09:58	12	BY MR. BESSETTE:	
12		10:10:03	13	Q No. Do you understand the question is, when do you believe you acquired the requisite knowledge and expertise to hold yourself out as an expert in gray marketing, such as you are doing today in this case?	10:11:50 10:11:53 10:11:55 10:11:59
13	A Correct.	10:10:03	14		
14	Q All right. You have no background, expertise or knowledge in marketing generally?	10:10:04 10:10:05	15		
15		10:10:05	16		
16	A Correct.	10:10:07	17		
17	Q To what extent in your view, Professor, is gray marketing related to marketing generally?	10:10:08 10:10:11 10:10:18	18		
18		10:10:11	19		
19		10:10:18	20		
20	A Again, I am not an expert in marketing generally. So how much it relates and in what manners it relates to marketing generally, I wouldn't be qualified to answer.	10:10:20 10:10:23 10:10:29 10:10:32	21		
21		10:10:23	22		
22		10:10:29	23		
23		10:10:32	24		
24	Q Okay. And when do you believe you	10:10:35			
		Page 39			Page 41
1	became an expert in gray marketing?	10:10:47	1	knowledge of level and expertise that you deemed yourself qualified to be an expert such as you are holding yourself out today?	10:12:19 10:12:22 10:12:25
2	A I'm not sure exactly what you mean by the question.	10:10:49 10:10:54	2		
3		10:10:54	3		
4	Q Let me ask you this -- let me withdraw	10:10:55 10:10:58	4	A It is a hard answer to give you, since I didn't assess myself in that way until after I was asked to serve in this case. However, the first time I walked into a classroom to teach gray market issues, I certainly had to have acquired the knowledge that I believed was necessary in order to educate -- I had to acquire the knowledge that was necessary in order to educate students about issues that they may not have known about, or may have had quite a lot of knowledge about before I walked in the room, and nonetheless, be able to teach them something. And as a result, I think, of the first time I walked into a classroom to teach gray market issues, I was certainly holding myself out as an expert to my students.	10:12:27 10:12:29 10:12:32 10:12:35 10:12:41 10:12:41 10:12:50 10:12:53 10:12:56 10:12:59 10:13:02 10:13:04 10:13:07 10:13:10
5		10:10:58	5		
6	MR. COLLINS: I should have objected.	10:10:59	6		
7	Go ahead.	10:11:00	7		
8	BY MR. BESSETTE:	10:11:01	8		
9	Q Would you consider yourself an expert in gray marketing the first year you taught a class	10:11:02 10:11:04	9		
10		10:11:04	10		
11	that had one component of it gray marketing?	10:11:09	11		
12	A I think my students --	10:11:12	12		
13	MR. COLLINS: I'm sorry. Objection,	10:11:12	13		
14	vague and ambiguous when you use the word "expert."	10:11:13	14		
15	because one doesn't know the context you are using	10:11:17	15		
16	it.	10:11:17	16		
17	In any event, go ahead and answer.	10:11:20	17		
18	MR. BESSETTE: Well, let me clarify.	10:11:20	18		
19	She has testified that she is holding herself out as an expert in gray marketing	10:11:20 10:11:24	19		
20		10:11:24	20		
21	MR. COLLINS: In connection with this litigation, yes.	10:11:25 10:11:26	21		
22		10:11:26	22		
23	MR. BESSETTE: Correct. And that's the definition I am using, so.	10:11:26 10:11:27	23		
24		10:11:27	24		

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1	A What I typically do in preparing for 10:13:25	
2	class 10:13:28	
3	Q And tell me what that is, please. 10:13:28	
4	MR. COLLINS: Asked and answered. 10:13:31	
5	Go ahead 10:13:31	
6	BY THE WITNESS: 10:13:32	
7	A Again, I read the materials that are 10:13:33	
8	necessary -- that I have assigned to my students. 10:13:35	
9	also read outside materials that are out there for 10:13:38	
10	them to read, but I am fairly sure they don't read. 10:13:42	
11	BY MR. BESSETTE: 10:13:46	
12	Q Fair enough. So outside of reading 10:13:46	
13	materials that other people have published, anything 10:13:48	
14	else to gain the knowledge that you think is 10:13:57	
15	appropriate to hold yourself out as an expert as you 10:14:00	
16	do to your students? 10:14:04	
17	A No. 10:14:05	
18	Q Okay. And how many articles would you 10:14:05	
19	say you have read in total dealing with the gray 10:14:07	
20	market or gray marketing activity? 10:14:09	
21	A Again, that's -- that would be hard to 10:14:12	
22	say. I don't keep a tally. 10:14:14	
23	Q I mean, a dozen, two dozen, three 10:14:16	
24	dozen? I mean, can you give me an estimate? 10:14:21	
	Page 43	Page 45
1	A Again, it is hard to say simply 10:14:23	
2	because I don't keep a tally, I don't keep a log. 10:14:26	
3	And for each section in each class that I teach, of 10:14:29	
4	which now there have been many over the course of 10:14:32	
5	the last three years, I do the same. I engage in 10:14:35	
6	the same activities. 10:14:39	
7	Q Well, I mean, just give me a sense for 10:14:41	
8	how many articles you review, published articles 10:14:44	
9	that deal with gray marketing? 10:14:47	
10	MR. COLLINS: May I? You mean ever? 10:14:52	
11	MR. BESSETTE: In total 10:14:52	
12	MR. COLLINS: The total number of 10:14:52	
13	articles ever reviewed to the extent that Professor 10:14:53	
14	Ochoa can give you a number 10:14:55	
15	BY MR. BESSETTE: 10:14:55	
16	Q Well, if it is easier to do it by 10:14:55	
17	year, maybe If you can think of a particular class 10:14:58	
18	year and you review materials, as you say, to get 10:15:00	
19	ready. How many -- let's do it that way, if that's 10:15:03	
20	easier. 10:15:03	
21	How many articles or books or 10:15:03	
22	publications would you review that deal with gray 10:15:04	
23	marketing activity in any given year, say, in the 10:15:07	
24	last three years? 10:15:10	

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1 articles and teaching at the law school? 10:18:30		1 international context? 10:21:57	
2 A. Yes. 10:18:32		2 A. In my experience of reading articles 10:21:58	
3 Q. Now, if you would turn to page 15 and 10:18:32		3 on gray marketing and in pulling up articles on gray 10:22:00	
4 16 of your initial report. It is actually the last 10:19:23		4 marketing and seeing articles on gray marketing, 10:22:02	
5 sentence of Paragraph 24 on page 16, but if you want 10:19:30		5 those which I have read, those I have seen titled, 10:22:05	
6 to see that paragraph in total, you say that, "A 10:19:33		6 those which I have scanned, a significant portion of 10:22:09	
7 significant amount of the literature on gray 10:19:38		7 those deal with gray marketing in the international 10:22:11	
8 marketing discusses it in an international context, 10:19:41		8 context. 10:22:14	
9 given the increased opportunities for arbitrage once 10:19:46		9 Q. So what you are saying is Paragraph 10:22:14	
10 largely undifferentiated products are sold 10:19:50		10 24, that last sentence should say a significant 10:22:18	
11 internationally." 10:19:54		11 amount of the literature on gray marketing that you 10:22:19	
12 How do you define "significant" in 10:19:55		12 have reviewed discuss it in an international 10:22:22	
13 that sentence, Professor? 10:19:57		13 context? 10:22:26	
14 A. Again, I am not comfortable with 10:19:59		14 A. I don't think that would be accurate. 10:22:27	
15 giving a percentage. It is a feel more than a 10:20:09		15 Q. How can you say that a significant 10:22:28	
16 quantitative measure. 10:20:13		16 amount of the total body of literature, which you 10:22:30	
17 Q I mean, is it a super majority, a 10:20:15		17 are implying to me here today when you don't know 10:22:34	
18 majority, some? 10:20:18		18 how many that is, how can you say a significant 10:22:36	
19 A. A good body 10:20:19		19 amount deals with international? I am just curious. 10:22:41	
20 Q. So that would be less than a majority? 10:20:20		20 MR. COLLINS: Misstates the testimony. 10:22:44	
21 A. Again, I'm not sure about the 10:20:24		21 Go ahead and answer. 10:22:45	
22 percentages. I would say it is somewhere -- well, 10:20:28		22 BY THE WITNESS: 10:22:46	
23 I'm just not sure about the percentages. It is a 10:20:31		23 A. Again, I stated that I wouldn't be 10:22:47	
24 feel. It is a lot of material on gray marketing. 10:20:33		24 able to give you a percentage. And the reason I 10:22:48	
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1 Q. Going back I guess to pages 3 and 4, 10:20:42		1 wouldn't be able to give you a percentage is because 10:22:52	
2 the eight articles, the eight academic articles that 10:20:52		2 I haven't tallied up how many articles there are, 10:22:53	
3 you reviewed in connection with your work in this 10:20:54		3 how many of them deal with international gray 10:22:57	
4 case. I think I already have the answer to this, 10:20:58		4 marketing. It is my experience in not just in 10:23:01	
5 but that's not the universe of academic literature 10:20:59		5 reviewing articles, but also in seeing the titles of 10:23:04	
6 related to gray marketing, right? 10:21:05		6 articles and doing research that pulls up lists of 10:23:06	
7 A. Correct. 10:21:06		7 articles, that a significant percentage of the 10:23:10	
8 Q. Okay. How many academic articles are 10:21:07		8 articles that are out there deal with gray marketing 10:23:14	
9 you aware of that deal with gray marketing? 10:21:10		9 in the international context. 10:23:18	
10 MR. COLLINS: In the universe? 10:21:13		10 Q. That's your basis for this statement? 10:23:18	
11 MR. BESSETTE: Yeah. 10:21:16		11 A. Let me rephrase. They either deal 10:23:18	
12 BY MR. BESSETTE: 10:21:16		12 specifically with gray marketing in the 10:23:18	
13 Q. How many exist? 10:21:17		13 international context, or at least touch on the 10:23:20	
14 A. I don't know. 10:21:18		14 issue. 10:23:21	
15 Q. No sense at all? 10:21:19		15 Q. That's the basis for your statement? 10:23:21	
16 A. It is like any area. If you ask me to 10:21:20		16 A. Yes 10:23:23	
17 give you a sense of how many academic articles exist 10:21:22		17 Q. And if you look at Exhibit 304, your 10:23:23	
18 in the area in which I focus my research, I couldn't 10:21:26		18 rebuttal report, in Paragraph 4, which is on page 2, 10:23:33	
19 even venture a guess. And it would be the same with 10:21:32		19 second sentence, you say, "The overwhelming 10:23:47	
20 gray marketing 10:21:35		20 attention national/international gray marketing 10:23:51	
21 Q. Well, if you don't know how many 10:21:36		21 receives in the academic literature." 10:23:56	
22 articles about gray marketing exist, how can you 10:21:43		22 Is that also based on -- what is 10:24:00	
23 assert that there is a significant amount of the 10:21:47		23 that sentence based on? 10:24:00	
24 literature, as you do here, dealing with it in an 10:21:49		24 A. The same. 10:24:01	

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1 Q. Okay. The eight articles you have	10:24:02	1 the title page of the international business	11:06:58
2 listed and your research and reviewing any number of	10:24:03	2 transactions book from which I teach. And then the	11:07:01
3 articles that you can't tell me how many and pulling	10:24:07	3 section which includes the materials on	11:07:04
4 things up on the internet?	10:24:10	4 counterfeiting and gray marketing.	11:07:08
5 MR. COLLINS: Asked and answered.	10:24:11	5 Q. Okay. And that section I think is	11:07:11
6 BY THE WITNESS:	10:24:12	6 titled or numbered 9.2?	11:07:14
7 A. Correct.	10:24:13	7 A. Correct.	11:07:17
8 BY MR. BESSETTE:	10:24:13	8 Q. And is 9.3 a different section?	11:07:17
9 Q. Okay. Let me ask you to look at	10:24:29	9 A. Yes.	11:07:21
10 Exhibit 305, Mr. Frazier's report.	10:24:36	10 Q. So just 9.2 is the portion of the	11:07:21
11 MR. COLLINS: Off the record.		11 course book that involves gray marketing?	11:07:27
12 MR. BESSETTE: Oh, is it time for a		12 A. Correct.	11:07:33
13 break?		13 Q. And then there are supplemental	11:07:33
14 MR. COLLINS: No, no, I don't know.		14 materials as well, which you talked about earlier,	11:07:36
15 But you're reaching a point when you can stop, I		15 which I understand do you pass out to your students	11:07:38
16 presume?	10:24:42	16 as part of your class or is that just what you teach	11:07:42
17 MR. BESSETTE: I can stop any time.	10:24:42	17 from?	11:07:45
18 THE WITNESS: If this is a good	10:24:44	18 A. Yeah --	11:07:45
19 breaking point, it might be good.	10:24:46	19 MR. COLLINS: Let him finish.	
20 MR. BESSETTE: Sure, that's fine.	10:24:46	20 THE WITNESS: Right, right, right.	
21 (Break taken)	10:24:46	21 MR. COLLINS: Do you have the	
22	10:24:46	22 question?	
23		23 THE WITNESS: Yes, I do.	
24		24	
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1 BY MR. BESSETTE:	11:04:43	1 BY THE WITNESS:	
2 Q. Professor, what are some of the other	11:04:58	2 A. The supplemental materials are	11:07:51
3 topics in the international business transaction	11:05:00	3 materials that I assign similarly to how I assign	11:07:52
4 course book?	11:05:02	4 the book. The students are expected to purchase the	11:07:57
5 MR. COLLINS: Document speaks for	11:05:03	5 materials in advance of the class.	11:08:00
6 itself	11:05:05	6 BY MR. BESSETTE:	11:08:01
7 Go ahead.	11:05:05	7 Q. Okay. How many times a year do you	11:08:01
8 BY MR. BESSETTE:	11:05:07	8 teach the international business transactions class?	11:08:05
9 Q. And I apologize. We are going to have	11:05:07	9 A. I teach it -- so far it has been once	11:08:07
10 it soon. We are having copies made.	11:05:10	10 a year. That may change.	11:08:09
11 MR. COLLINS: Off the record.	11:05:15	11 Q. So, so far between '03 and the present	11:08:11
12 (Off the record	11:05:19	12 it has been once a year?	11:08:14
13 discussion.)	11:06:32	13 A. Correct.	11:08:16
14 (Exhibit No. 306 was	11:06:32	14 Q. And that module 9.2 and whatever	11:08:16
15 marked for	11:06:32	15 supplemental materials dealing with gray market, how	11:08:20
16 identification.)	11:06:33	16 big a portion of that class that runs a semester is	11:08:24
17 BY MR. BESSETTE:	11:06:33	17 that?	11:08:29
18 Q. All right. Professor, I'm handing you	11:06:34	18 A. Typically we devote between three and	11:08:29
19 what the court reporter has marked as Exhibit 306.	11:06:34	19 four class sessions to these issues.	11:08:32
20 And for the record, would you just identify that,	11:06:38	20 Q. And then how much preparation work do	11:08:34
21 including the Bates numbers, which are printed at	11:06:41	21 you do to be able to teach those three or four	11:08:42
22 the bottom, from just the first one to the last one?	11:06:44	22 classes that deal with the subject matter we are	11:08:45
23 A. The Bates Numbers OCH 0137 to OCH	11:06:47	23 talking about, gray marketing?	11:08:47
24 0199. And it is the front page or the first sort of	11:06:53	24 A. How much in time?	11:08:49

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1 Q Yes 11:08:51		
2 A. I typically allot really between three 11:08:53	3 and five hours preparation time for every hour that 11:08:57	1 We also talk about, again in the 11:11:14
4 I spend in class. 11:09:01		2 introductory part of the class, we talk about some 11:11:20
5 Q And when you said three to four 11:09:02	6 sessions, how many hours is a session? 11:09:04	3 of the difficulties that arise in international 11:11:23
7 A. One hour. 11:09:06		4 transactions, international business transactions 11:11:27
8 Q So three to five hours preparation on 11:09:07	9 average for one hour of class. And during a 11:09:13	5 typically, which involve issues of language, issues 11:11:31
10 semester, you have three or four classes throughout 11:09:17	11 the year that deal with gray marketing issues? 11:09:22	6 of trust, and issues of varying cultures. We talk 11:11:35
12 A. Yeah, let me back up, actually 1 was 11:09:25	13 speaking about what I do now after having taught all 11:09:27	7 about in addition to -- well, that's sort of the 11:11:38
14 of my classes more than once. In the first year 11:09:31	8 very beginning of the class. 11:11:39	9 We also talk about different kinds 11:11:41
15 that I was teaching, the amount of prep time that I 11:09:34		10 of international business transactions, different 11:11:48
16 devote has decreased, mostly because I have read the 11:09:37		11 categories of international business transactions 11:11:51
17 course materials before, the textbook materials 11:09:41		12 And so we move from -- 11:11:54
18 before. And so the majority of my time now is spent 11:09:44		13 (Off the record 11:11:54
19 reading outside materials. 11:09:47		14 discussion.) 11:11:54
20 In the first year that I taught 11:09:50		15 BY THE WITNESS: 11:11:54
21 the class, I can remember that it was not unusual to 11:09:52		16 A. So we move from international sale of 11:12:04
22 spend something more like 10 hours per class session 11:09:58		17 goods to more complex levels of involvement. So we 11:12:05
23 preparing for class. The second year that I taught, 11:10:01		18 will talk about licensing, franchising, foreign 11:12:10
24 it was somewhat less than that. And the last time 11:10:04		19 direct investment and the kinds of partnerships that 11:12:16
		20 a U.S. entity might have with foreign entities in 11:12:23
		21 each of those kinds of transactions. That takes up 11:12:27
		22 a great bulk of the class. That was a very quick 11:12:30
		23 summary of a lot of the class. 11:12:36
		24 And then we also devote a section 11:12:37
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1 that I taught it, it was between three and 11:10:09		
2 five hours. 11:10:12		1 of the class to what I like to call sort of the 11:12:40
3 Q. Okay What are some of the other 11:10:12		2 underbelly of international business transactions, 11:12:43
4 subject areas in the international business 11:10:13		3 and the gray marketing and counterfeit materials are 11:12:45
5 transactions class? So we have gray marketing we 11:10:15		4 sort of a nice transition into that material. I 11:12:48
6 have talked about. What are some of the other big 11:10:18		5 teach this material and then I teach about some of 11:12:53
7 topics that are within the class? 11:10:19		6 the environmental concerns and human rights concerns 11:12:55
8 A. Okay There are a number of topics, 11:10:21		7 that are attendant to international business 11:12:58
9 obviously. We start talking about the prevalence of 11:10:24		8 transactions. I talk about some of the materials or 11:13:01
10 international business transactions generally, the 11:10:27		9 some of the efforts that have been made over the 11:13:04
11 growth of international business transactions, sort 11:10:30		10 course of the last 35 years or so to alleviate some 11:13:08
12 of those wider phenomena, contextualizing the 11:10:34		11 of those concerns, going all the way -- going into 11:13:13
13 reasons for the course and the importance of the 11:10:39		12 the history of it, as well as covering fairly recent 11:13:17
14 course 11:10:39		13 material. 11:13:22
15 We move on by talking about really 11:10:41		14 After that section, we talk 11:13:23
16 mechanic transactions, how it is that an 11:10:44		15 about -- after that section we talk about -- I am 11:13:25
17 international business transaction may occur. So we 11:10:47		16 trying to picture my syllabus. The reason I am 11:13:31
18 talk about letters of credit, we talk about the 11:10:50		17 struggling with the last section is because that 11:13:36
19 relationships that the buyer and a seller would have 11:10:53		18 section I play with occasionally. And I often play 11:13:39
20 with a bank, the relationships that they might have 11:10:55		19 with whether I want to change it. And the last time 11:13:42
21 with each other, and how it is that individuals and 11:10:58		20 I taught it, I wasn't entirely happy with it. And 11:13:43
22 companies engaged in international business 11:11:04		21 there is a lot of material that I exclude that's in 11:13:47
23 transactions gain the confidence that is necessary 11:11:06		22 the textbook that I don't include in the class. 11:13:49
24 to transact across borders. 11:11:11		23 Q. I think that's good. Unless you want 11:13:53
		24 to go on, I won't stop you. 11:13:53

			Page 58	Page 60
1	A. No	11:13:53		
2	Q. Okay.	11:13:54		
3	MR. COLLINS: And we don't want you to	11:13:54		
4	answer more than he asks, so good answer.	11:13:57		
5	THE WITNESS: Right	11:14:00	1. Q. Do you consider yourself an expert in	11:15:25
6	BY MR. BESSETTE:	11:14:00	2 connection with the contracts that you teach?	11:15:29
7	Q. So let me just ask, on the licensing	11:14:01	3 A. Absolutely	11:15:30
8	you talked about licensing as it relates to	11:14:04	4 Q. And again, that's based on your	11:15:31
9	international business transactions, that's one	11:14:07	5 reviewing the course book and whatever other	11:15:33
10	section or component of the class. Do you consider	11:14:09	6 materials that you use to prepare to teach law	11:15:38
11	yourself an expert in licensing in international	11:14:13	7 students?	11:15:42
12	business transactions?	11:14:16	8 A. Yes.	11:15:42
13	A. Sure.	11:14:17	9 Q. So, Professor, just I want to be	11:15:42
14	Q. And that's based on the same criteria	11:14:18	10 clear. Your expertise in gray marketing as it	11:16:33
15	that you've used before, you read materials, you	11:14:20	11 relates to this case in which you are proffering	11:16:37
16	presented in your class, so you think you are an	11:14:22	12 yourself as an expert in, is based on your being a	11:16:40
17	expert?	11:14:24	13 lawyer and teaching classes that contain gray	11:16:48
18	A. Yes.	11:14:24	14 marketing subject areas and your reading the	11:16:51
19	Q. Okay. Same thing with respect to	11:14:25	15 materials to prepare for the class that you teach	11:16:54
20	franchising in connection with the international	11:14:27	16 That's the basis for your expertise?	11:16:57
21	business transactions. Because it is in the class	11:14:30	17 A. The materials that I teach, as well as	11:16:59
22	and you teach it, do you feel that you are an expert	11:14:32	18 outside materials, yes.	11:17:02
23	in franchising in connection with international	11:14:36	19 Q. Now, I think before the break I asked	11:17:02
24	business transactions?	11:14:39	20 you to take a look at Paragraph 37 of Mr. Frazier's	11:17:10
			21 report -- I'm sorry, it may be professor as well.	11:17:16
			22 But Exhibit 305, Paragraph 37, it is on page 12	11:17:16
			23 Professor Frazier writes that -- I think it's the	11:17:31
			24 second sentence -- that consumers shopping at Costco	11:17:38
			Page 59	Page 61
1	A. Yes	11:14:40		
2	Q. Same question with respect to foreign	11:14:41	1 did not particularly care about pre- and post-sales	11:17:41
3	direct investment?	11:14:44	2 service availability at specialty and pro shops, and	11:17:45
4	A. Yes. And I would say there are areas	11:14:44	3 sites, the Coughlan piece down there. Do you agree	11:17:51
5	in which I feel more and less comfortable. For	11:14:46	4 with that statement?	11:17:53
6	various reasons, I may have other pressing issues	11:14:50	5 MR. COLLINS: Excuse me. You mean	11:17:55
7	that are going on during the time that I am	11:14:52	6 that one statement in isolation apart from the	11:17:55
8	preparing for a class and may have read less or more	11:14:55	7 paragraph and apart from the section?	11:18:00
9	outside materials as a result.	11:15:00	8 MR. BESSETTE: Yes.	11:18:02
10	Q. Is there any area that you can tell me	11:15:02	9 BY MR. BESSETTE:	11:18:02
11	now in connection why the international business	11:15:06	10 Q. Do you agree with that statement?	11:18:03
12	transactions and the course book that you teach from	11:15:08	11 MR. COLLINS: I will caution you, go	11:18:04
13	and whatever other materials you read to prepare,	11:15:08	12 ahead and answer, but if you feel you need to read	11:18:06
14	that you do not consider yourself an expert in?	11:15:17	13 the paragraph and read the section, you read them.	11:18:11
15	MR. COLLINS: In connection with this	11:15:17	14 THE WITNESS: Uh-huh. I'll be right	11:18:11
16	particular course?	11:15:18	15 with you.	11:18:13
17	MR. BESSETTE: Yes. I thought I made	11:15:18	16 BY THE WITNESS:	11:18:13
18	that clear.	11:15:19	17 A. No, I don't	11:18:16
19	BY THE WITNESS:	11:15:19	18 BY MR. BESSETTE:	11:18:17
20	A. In connection with the course, no.	11:15:20	19 Q. Why not?	11:18:18
21	BY MR. BESSETTE:	11:15:21	20 A. I think that what he says there is	11:18:18
22	Q. You also teach I think it is a	11:15:21	21 essentially that nobody shopping -- what I read in	11:18:23
23	contracts class, right?	11:15:23	22 that sentence is that nobody shopping at Costco	11:18:26
24	A. Correct.	11:15:24	23 would care about pre and post sales service. And I	11:18:30
			24 think that's a stretch. I could imagine -- well, I	11:18:34

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1	(Record read.)	11:27:09	1	that the reason that they were experiencing	11:29:21
2	MR. COLLINS: Now, Paul asked crisp	11:27:09	2	declining sales was gray marketing. However, Adams	11:29:24
3	questions. That was not necessarily the crispest.	11:27:12	3	Golf was experiencing a gray market problem, and	11:29:28
4	So make sure you understand the question before you	11:27:17	4	that very much informed my analysis.	11:29:30
5	answer. And Paul can say it again or we could have	11:27:19	5	Q. Again, I think the answer was	11:29:33
6	it read back again. If you understand it, go ahead	11:27:23	6	confusing. Let me try to parse a couple other	11:29:34
7	and answer.	11:27:24	7	question	11:29:34
8	THE WITNESS: I think I understand the	11:27:24	8	Did you undertake any analysis of	11:29:36
9	question.	11:27:27	9	the causes for Adams Golf's decline in sales in	11:29:40
10	BY THE WITNESS:	11:27:27	10	1998, the second half?	11:29:43
11	A. Though my answer -- my answer takes	11:27:28	11	A. Can you ask that again?	11:29:45
12	issue with various parts of what you said. And I	11:27:32	12	Q. Did you undertake any analysis to	11:29:47
13	can either take issue with those in turn or you	11:27:37	13	determine what caused Adams Golf's decline in sales	11:29:51
14	could break the question into a couple of parts.	11:27:40	14	in the second half of 1998?	11:29:57
15	BY MR. BESSETTE:	11:27:42	15	A. Yes.	11:29:58
16	Q. Go ahead and answer it however you see	11:27:42	16	Q. Tell me what analysis you undertook.	11:29:59
17	fit.	11:27:45	17	A. I studied its gray market problem and	11:30:02
18	(Off the record	11:27:45	18	made a determination of whether or not its gray	11:30:06
19	discussion.)	11:28:17	19	market problem caused some of that decline.	11:30:08
20	MR. COLLINS: Are you okay or do you	11:28:17	20	Q. What analysis did you undertake in	11:30:10
21	need it read back again?	11:28:19	21	particular?	11:30:13
22	MR. BESSETTE: She already said, Todd,	11:28:19	22	A. I applied the academic literature on	11:30:13
23	that she understood.	11:28:19	23	gray marketing studies, the business strategies that	11:30:18
24	MR. COLLINS: No. We just had an	11:28:21	24	Adams Golf employed, I superimposed that on the	11:30:22
		Page 71			Page 73
1	interruption, Paul. She is entitled to hear the	11:28:23	1	academic literature on the causes of gray marketing.	11:30:25
2	question again, which was confusing, if she wants	11:28:25	2	the various invitations that companies can make to	11:30:28
3	to		3	gray marketers, and then saw that, in fact, Adams	11:30:33
4	MR. BESSETTE: Well, let's just --		4	Golf had experienced a gray market problem and made	11:30:35
5	MR. COLLINS: If you're read, go ahead		5	a determination based on those factors.	11:30:35
6	and answer.		6	Q. And that's what led you to your	11:30:37
7	BY MR. BESSETTE:		7	conclusion that the decline in sales was caused in	11:30:40
8	Q. Do you want it again?		8	part by gray marketing?	11:30:43
9	A. I'm okay. I'm fine		9	A. Yes.	11:30:45
10	The first part of your question	11:28:30	10	Q. Nothing else, just reading the	11:30:45
11	implied, I read -- I interpreted in what you said	11:28:31	11	academic literature and superimposing that on to the	11:30:47
12	that academic literature is divorced from real life	11:28:37	12	company's decline in sales?	11:30:52
13	or reality. The academic literature that deals	11:28:41	13	MR. COLLINS: Mischaracterize the	11:30:54
14	specifically with the effects of gray marketing on	11:28:45	14	testimony.	11:30:56
15	both on brand image and profitability or sales as a	11:28:48	15	BY THE WITNESS:	11:30:56
16	result is, in fact, empirically based. And so it is	11:28:52	16	A. On to Adams Golf's business model,	11:30:56
17	a summary and extrapolation of what happens in that	11:28:57	17	it's strategies, and yes, the fact that it was	11:31:00
18	rear world.	11:29:01	18	actually experiencing a gray market problem and was	11:31:08
19	In addition when -- so yes, I	11:29:02	19	experiencing a decline in sales.	11:31:10
20	relied on that academic literature when I was	11:29:03	20	BY MR. BESSETTE:	11:31:13
21	studying the problem that Adams Golf had faced. And	11:29:08	21	Q. So okay. In your analysis, did you	11:31:15
22	I want to make clear that had Adams Golf not had a	11:29:11	22	attribute any other causes to Adams Golf's decline	11:31:17
23	gray market problem when Adams Golf was experiencing	11:29:15	23	in sales in the second half of 1998 other than gray	11:31:20
24	declining sales. I would have no reason to believe	11:29:18	24	marketing?	11:31:23

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1	MR. COLLINS: Outside the scope. 11:31:24	
2	Go ahead. 11:31:26	1 You gave me the response 11:32:52
3	BY THE WITNESS: 11:31:26	2 A. That gray marketing was significant to 11:32:54
4	A. In my analysis, no. I was looking at 11:31:26	3 potential investors to the company and investors I 11:32:56
5	the gray market problem. 11:31:28	4 don't remember exactly what I said, but... 11:32:59
6	BY MR. BESSETTE: 11:31:30	5 Q. I believe you were talking about gray 11:33:01
7	Q. Did you quantify what percent of the 11:31:30	6 marketing 11:33:02
8	decline in sales in the second half of 1998 was 11:31:33	7 A. Yes, I was referring to gray 11:33:03
9	caused, in your opinion, by gray marketing? 11:31:37	8 marketing 11:33:04
10	A. I did not. 11:31:39	9 Q. Now, when in your view, was it 11:33:05
11	Q. So you don't have any opinion on that 11:31:40	10 significant to investors? 11:33:08
12	as you sit here today? 11:31:43	11 A. In my view, gray marketing became 11:33:09
13	A. Not in a quantifiable, numerical 11:31:44	12 significant to investors in thinking back of the 11:33:11
14	sense, no. 11:31:46	13 history of Adams Golf's gray market problem, there 11:33:14
15	Q. In any sense? 11:31:47	14 was the initial shipment or the initial appearance 11:33:18
16	A. Yes. 11:31:48	15 of Adams Golf clubs in Costcos in Canada. And then 11:33:21
17	Q. What is your opinion? 11:31:49	16 there was a belief that that shipment was an 11:33:27
18	A. Significant. 11:31:50	17 isolated incident. And that once those clubs had 11:33:31
19	Q. What does that mean? 11:31:51	18 been sold through, there would no longer be a 11:33:34
20	A. It means enough that it would have 11:31:52	19 problem. 11:33:37
21	been important to Adams Golf and to investors. 11:31:54	20 That proved not to be the case. 11:33:38
22	Q. When the company experienced gray 11:31:56	21 In fact, soon thereafter there were additional 11:33:40
23	marketing -- I'm sorry. 11:31:56	22 shipments to Costcos not just in Canada, but 11:33:43
24	When the company experienced 11:32:00	23 appearing all over Canada and every region of the 11:33:46
		24 United States. At that point, I think it became 11:33:50

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1	decline in sales -- Strike that. 11:32:02	1 significantly important to investors 11:33:54
2	When was it important? When was 11:32:04	2 Q. Are you familiar with the common 11:33:55
3	it significant to investors, as you just mentioned? 11:32:06	3 marketing practice of segmenting? 11:33:57
4	MR. COLLINS: What is the "it"? 11:32:13	4 A. If you can tell me a little bit more 11:34:00
5	MR. BESSETTE: Would you read her last 11:32:13	5 about what you mean by segmenting I can answer that 11:34:04
6	answer, please. 11:32:13	6 question. 11:34:08
7	(Record read.) 11:32:22	7 Q. Well, are you able to sit here and 11:34:08
8	MR. COLLINS: Vague and ambiguous, 11:32:22	8 tell me what the major segments in the market for 11:34:10
9	hopelessly vague at this point. 11:32:25	9 golf clubs would be? 11:34:12
10	MR. BESSETTE: That's her answer. 11:32:28	10 A. I'm not sure if you mean geographical 11:34:13
11	MR. COLLINS: Right. Because -- make 11:32:28	11 segments or if you mean consumer segments. 11:34:16
12	it a more crisp question, please, because the "it" 11:32:32	12 Q. Consumers in the industry, so consumer 11:34:18
13	in context is very unclear at this point. 11:32:35	13 segments. 11:34:22
14	BY MR. BESSETTE: 11:32:38	14 A. Yes. 11:34:23
15	Q. Do you understand my question, 11:32:39	15 Q. What are the consumer segments that 11:34:23
16	Professor? 11:32:40	16 you are aware of for golf clubs? 11:34:27
17	A. Can you please restate it? 11:32:40	17 A. In reading the Harvard business school 11:34:29
18	Q. What did you mean in your last 11:32:43	18 document that was produced in connection with 11:34:35
19	response that it was significant to potential 11:32:45	19 Mr. Frazier's report, in it I learned -- I saw that 11:34:37
20	investors? 11:32:49	20 characterized in that report, and I will just use 11:34:44
21	MR. COLLINS: Vague and ambiguous. 11:32:50	21 the same terminology, as avid golfers, I think 11:34:47
22	Go ahead. 11:32:52	22 it was beginning -- no. Advanced golfers, maybe it 11:34:52
23	BY MR. BESSETTE: 11:32:52	23 was average golfers and beginning golfers, I think 11:34:56
24	Q. I just want to know what you meant. 11:32:52	24 is the terminology they used. 11:35:00

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1 Q And prior to reading that, you had no	11:35:03	1 high profit margin. And those would indicate that	11:36:32
2 understanding or did you, of consumer segmenting in	11:35:06	2 Adams Golf was trying to target the high end of the	11:36:35
3 the golf club market?	11:35:09	3 market.	11:36:40
4 MR. COLLINS: As she just testified,	11:35:13	4 BY MR. BESSETTE:	11:36:40
5 is that what you mean?	11:35:13	5 Q Okay. And that high end of the	11:36:40
6 MR. BESSETTE: No.	11:35:13	6 market, where would this segment likely shop for the	11:36:42
7 MR. COLLINS: In connection with --	11:35:14	7 golf clubs?	11:36:46
8 BY MR. BESSETTE:	11:35:14	8 A In the places that Adams Golf was	11:36:47
9 Q Prior to reading the Harvard business	11:35:16	9 hoping they would shop	11:36:51
10 school study, did you have any knowledge of the	11:35:18	10 Q Pro shops, specialty stores, that sort	11:36:52
11 consumer segmenting in the golf club market?	11:35:18	11 of thing?	11:36:55
12 MR. COLLINS: Vague and ambiguous.	11:35:18	12 A Yes.	11:36:55
13 BY THE WITNESS:	11:35:21	13 Q Which of the consumer segments is more	11:36:55
14 A The information that I would have in	11:35:21	14 likely to shop at Costco or other discount	11:36:58
15 that respect would have come from reading documents	11:35:23	15 retailers?	11:37:01
16 in connection with this litigation.	11:35:26	16 MR. COLLINS: Which of the two	11:37:01
17 BY MR. BESSETTE:	11:35:28	17 segments you referred to in the article a moment	11:37:02
18 Q Okay. Prior to this litigation, did	11:35:28	18 ago, is that what you mean?	11:37:05
19 you have any knowledge of consumer segmenting in the	11:35:31	19 BY MR. BESSETTE:	11:37:05
20 golf club market?	11:35:34	20 Q Which of the customer segments that we	11:37:06
21 MR. COLLINS: Vague and ambiguous.	11:35:36	21 are referring to would be most likely to shop in	11:37:08
22 BY THE WITNESS:	11:35:36	22 Costco or other discount retailers?	11:37:11
23 A I had what I would characterize as a	11:35:38	23 A That's impossible to say.	11:37:15
24 lay understanding of that.	11:35:39	24 Q Why?	11:37:16
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1 BY MR. BESSETTE:	11:35:40	1 A I think there is not necessarily a	11:37:17
2 Q Certainly not an expert understanding?	11:35:41	2 direct correlation between avid golfers and lack of	11:37:19
3 A No	11:35:42	3 price sensitivity.	11:37:24
4 Q And now that you have read litigation	11:35:42	4 Q What is that based on?	11:37:25
5 and read the Harvard business school study, do you	11:35:47	5 A Based on living in the world. People	11:37:27
6 have any view as to what customer segment Adams Golf	11:35:50	6 like to find a bargain. So even though a person may	11:37:29
7 was targeting with the Tight Lies?	11:35:55	7 be an avid golfer, they may not have so much	11:37:32
8 MR. COLLINS: Vague and ambiguous.	11:35:57	8 disposable income that they wouldn't seek the deal.	11:37:36
9 BY THE WITNESS:	11:36:00	9 Q So you don't think it is more likely	11:37:36
10 A Yeah. I'm not sure exactly what you	11:36:01	10 that a certain consumer segment would shop at Costco	11:37:39
11 mean by the question.	11:36:01	11 in terms of the golf market?	11:37:45
12 BY MR. BESSETTE:	11:36:02	12 A No.	11:37:47
13 Q What don't you understand about it?	11:36:02	13 Q How likely is it in your view that a	11:37:47
14 A I'm not sure -- well, if you can	11:36:02	14 beginning golfer would go to a pro shop and pay full	11:38:02
15 actually just restate the question that will be	11:36:07	15 price for a club?	11:38:06
16 helpful	11:36:07	16 A That they would pay full price for a	11:38:07
17 Q Can you say which of the customer	11:36:09	17 club?	11:38:10
18 segments listed in the Harvard business school study	11:36:11	18 Q How likely is a customer in the	11:38:10
19 that Adams Golf was targeting?	11:36:15	19 beginning golfer segment to go to a golf shop and	11:38:13
20 MR. COLLINS: Foundation.	11:36:19	20 pay full price for a club?	11:38:17
21 BY THE WITNESS:	11:36:20	21 A I see two parts in your question, and	11:38:19
22 A It appears to me from the documents	11:36:20	22 I will answer them both. I think it is likely that	11:38:21
23 that I've read that Adams Golf wanted to maintain	11:36:22	23 a beginning golfer would like to find as much	11:38:24
24 high prestige brand, wanted to be able to maintain a	11:36:27	24 information as they could about the products that	11:38:28

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1	BY THE WITNESS:	12:06:24	1	when you said it was widely known that gray	12:11:28
2	A. It was a step that was taken in	12:06:25	2	marketing was taking place in certain sectors of the	12:11:31
3	reaction to the gray market having already arised at	12:06:26	3	industry?	12:11:35
4	Adams Golf, and it was a proactive step	12:06:32	4	A. I meant that gray marketing was	12:11:35
5	BY MR. BESSETTE:	12:06:35	5	occurring in certain sectors of the industry. I'm	12:11:35
6	Q. And was Adams Golf's efforts to label	12:06:35	6	not sure what's unclear.	12:11:37
7	its products with serial numbers a proactive supply	12:06:40	7	Q. How was it widely known?	12:11:37
8	side strategy to combat or deal with its existing	12:06:40	8	A. The world is -- well, let me back up.	12:11:39
9	gray marketing problem?	12:06:45	9	Consumers become aware of gray marketing through	12:11:44
10	A. Yes.	12:06:46	10	seeing golf clubs available through gray market	12:11:47
11	MR. COLLINS: Paul, if you have	12:06:56	11	chains, big box retailers, etcetera. And also in	12:11:54
12	reached a point to pause.	12:06:57	12	the golf industry, my understanding is that word	12:11:58
13	MR. BESSETTE: Oh, this is fine. I	12:07:18	13	spreads quickly and that would be another way	12:12:02
14	forgot. That's fine.	12:07:18	14	Q. So your understanding, what is that	12:12:04
15	(Off the record	12:07:18	15	based on?	12:12:08
16	discussion.)	12:07:18	16	A. What I have read about the golf	12:12:09
17	BY MR. BESSETTE:	12:07:18	17	industry in connection with this litigation.	12:12:11
18	Q. Let's see. Professor Frazier's	12:07:20	18	Q. Okay. Any other knowledge about the	12:12:13
19	report, 305, Paragraph 11, first sentence "Gray	12:07:24	19	golf industry other than what you have read in this	12:12:15
20	market activities are commonplace in a wide variety	12:07:42	20	litigation?	12:12:18
21	of industries from expensive consumer durables like	12:07:45	21	A. Do I know anything else about the golf	12:12:20
22	cars to inexpensive household products like	12:07:50	22	industry other than what I have read in connection	12:12:23
23	cosmetics." Do you agree with that statement?	12:07:53	23	with this litigation? Is that the question?	12:12:24
24	A. Yes.	12:07:55	24	Q. Well, I will ask her to repeat my	12:12:26
		Page 107			Page 109
1	Q. In Paragraph 5A of your rebuttal	12:07:56	1	question.	12:12:26
2	report, and I think you do it a couple of other	12:09:53	2	(Record read.)	12:12:26
3	places too, but that's the one I have. I guess it	12:09:56	3	BY THE WITNESS:	12:12:26
4	is the last sentence. You say, "In addition," and	12:10:19	4	A. I guess I just don't understand. Do I	12:12:36
5	then A. And what you are talking about there is	12:10:23	5	have any other knowledge about the golf industry?	12:12:39
6	gray marketing. Saying that gray marketing -- it	12:10:26	6	BY MR. BESSETTE:	12:12:42
7	was widely known that gray marketing was taking	12:10:29	7	Q. Let me ask you this: What was your	12:12:42
8	place in certain sectors of the golf industry. What	12:10:31	8	level of knowledge about the golf industry prior to	12:12:43
9	did you mean by that?	12:10:34	9	you teaching a class that had gray marketing in a	12:12:46
10	MR. COLLINS: Read to yourself the	12:10:36	10	subset, you know, gray marketing as it related to	12:12:49
11	whole subparagraph, or if you feel necessary, the	12:10:38	11	the golf industry? What was your knowledge?	12:12:51
12	whole paragraph, please.	12:10:40	12	A. No more than a layperson.	12:12:54
13	BY THE WITNESS:	12:10:42	13	Q. And now it is more because of the	12:12:56
14	A. Okay. As you know, I teach a section	12:10:59	14	litigation that we are in and the materials that you	12:12:59
15	on gray marketing and use the golf industry as an	12:11:01	15	have read about it?	12:13:02
16	example. Specifically, I use Callaway as an example	12:11:05	16	A. Yes	12:13:04
17	of gray marketing, in addition to others. It is	12:11:08	17	Q. Paragraph 1 of your rebuttal report,	12:13:05
18	certainly not the case that gray marketing was a	12:11:14	18	I actually, you say that you have been asked by	12:14:05
19	uniform problem in the golf industry. It affected	12:11:17	19	plaintiff's counsel to provide your opinions	12:14:14
20	different companies differently.	12:11:21	20	regarding the expert reports of Stephen Grace and	12:14:15
21	BY MR. BESSETTE:	12:11:22	21	Chris James to the extent such reports purport to	12:14:19
22	Q. That's what you meant?	12:11:22	22	present the characteristics of gray marketing and	12:14:23
23	A. Yes.	12:11:25	23	the effects the gray market can have on brand name	12:14:26
24	Q. What I want to know is what you meant	12:11:26	24	products on the trademark owners or manufacturers	12:14:29

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1	thereof. Do you differentiate a brand name from a	12:14:32	1	the world and those that have the fortune, the good	12:17:03
2	hot product?	12:14:37	2	fortune of becoming hot products.	12:17:08
3	A. Yes.	12:14:39	3	BY MR. BESSETTE:	12:17:12
4	Q. Was the Tight Lies a hot product or a	12:14:39	4	Q. And what are some of the differences	12:17:12
5	brand name?	12:14:52	5	as it relates to gray marketing?	12:17:14
6	A. It was both.	12:14:53	6	A. Gray marketing, as we have already	12:17:16
7	Q. And what is your basis for saying	12:14:55	7	discussed, can occur in a wide variety of sectors.	12:17:19
8	that?	12:14:59	8	And it is not the case necessarily that gray	12:17:23
9	A. It was a brand name that was popular	12:14:59	9	marketing only occurs in the case of products that	12:17:26
10	at the time it was a hot product.	12:15:02	10	have become hot products, but certainly a brand name	12:17:30
11	Q. I am sorry?	12:15:04	11	as having sort of risen to the level of being a hot	12:17:35
12	A. So a hot product would be a modifier.	12:15:06	12	product, becoming a popular product, one that	12:17:39
13	It would be a way of describing the brand name. The	12:15:10	13	consumers widely desire, makes it more attractive to	12:17:42
14	brand name was popular. It was in demand. It was a	12:15:14	14	the gray market.	12:17:46
15	hot product.	12:15:17	15	Q. Okay. And Paragraph 5B of your	12:17:47
16	Q. Do any of the articles that you have	12:15:17	16	rebuttal, the next page, next to last sentence. You	12:18:15
17	reviewed that you listed in your report speak to the	12:15:20	17	say, "Prior to the initial public offering, there	12:18:26
18	difference between a brand name -- well, hold on.	12:15:25	18	were indications that gray market sales of Adams	12:18:29
19	Strike that. Yeah.	12:15:39	19	Golf clubs were increasing and that the gray market	12:18:33
20	Do any of the articles that you	12:15:40	20	could have a deleterious effect on sales for Adams."	12:18:36
21	have read speak to the difference between	12:15:42	21	First off, did you review any data that indicates	12:18:40
22	characteristics involved with a brand name versus	12:15:45	22	that?	12:18:43
23	characteristics involved with a hot product as they	12:15:51	23	A. Yes.	12:18:43
24	relate to gray market?	12:15:54	24	Q. What was that?	12:18:44
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1	MR. COLLINS: I don't think you meant	12:16:01	1	A. The Costco -- the Costco figures that	12:18:45
2	to, but vague and ambiguous.	12:16:03	2	were -- that have been produced in connection with	12:18:49
3	So answer if you can understand	12:16:06	3	this litigation.	12:18:53
4	the question.	12:16:09	4	Q. So the Costco sales data that they	12:18:54
5	BY THE WITNESS:	12:16:11	5	produced?	12:18:59
6	A. Yeah. Actually if you could just	12:16:16	6	A. Okay. As to -- you are asking about	12:18:59
7	rephrase, that would be helpful	12:16:18	7	figures, and it is a little bit -- well, let me just	12:19:02
8	MR. COLLINS: I can tell you what I	12:16:24	8	tell you the world of things that I saw -- the world	12:19:08
9	think the problem is, if that would be helpful	12:16:25	9	of things that would be classified as figures.	12:19:10
10	MR. BESSETTE: No, that's okay. But I	12:16:28	10	Q. First off, I didn't ask about figures.	12:19:12
11	appreciate it	12:16:30	11	What I wanted to know was, your statement here that	12:19:14
12	BY MR. BESSETTE:	12:16:31	12	the gray market sales were increasing and the gray	12:19:17
13	Q. Let me just ask generally. Do you	12:16:33	13	market could have a deleterious effect on sales for	12:19:21
14	recall any distributions or differences in any of	12:16:36	14	Adams, what is that based on?	12:19:25
15	the academic articles you cite in your report about	12:16:39	15	MR. COLLINS: And forgive me, that is	12:19:27
16	gray marketing as it relates to a brand name product	12:16:43	16	compound. It sounds like figures to me in the first	12:19:28
17	and/or a hot product?	12:16:47	17	half of that question. That's the question.	12:19:30
18	MR. COLLINS: Foundation.	12:16:48	18	Answer it, subject to my	12:19:32
19	BY THE WITNESS:	12:16:49	19	objection.	12:19:33
20	A. Honestly, I am not remembering whether	12:16:49	20	BY THE WITNESS:	12:19:34
21	it is in the materials that I submitted in	12:16:51	21	A. Okay. As to the first part of that	12:19:34
22	connection with this litigation or other materials	12:16:53	22	sentence, there were indications that gray market	12:19:36
23	that I have read previously, but, yes, there is a	12:16:55	23	sales of Adams Golf clubs were increasing. That	12:19:39
24	distinction between the brand names that exist in	12:16:59	24	information came from a few sources, one was the	12:19:42

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1 And so when he stated that profit margins had better 12:23:56 2 stay high and would jump ship if they wouldn't, 12:24:00 3 which is how I remember the answer, but again, I am 12:24:04 4 not exactly sure of the quote. That immediately 12:24:07 5 raised flags for me, given that gray marketing was 12:24:11 6 already occurring at Adams. 12:24:16 7 BY MR. BESSETTE: 12:24:17 8 Q. What information or data was available 12:24:17 9 to the company that would identify the causes of 12:24:23 10 this deleterious effect that you think was evident 12:24:28 11 pre IPO? 12:24:32 12 MR. COLLINS: Foundation 12:24:33 13 THE WITNESS: Can you restate the 12:24:35 14 question? 12:24:35 15 MR. BESSETTE: Can you? 12:24:45 16 (Record read.) 12:24:47 17 BY THE WITNESS: 12:24:47 18 A Okay. I think I am going to ask you 12:24:49 19 to restate the question, simply because I'm not sure 12:24:54 20 exactly what it is that you are trying to -- 12:24:57 21 BY MR. BESSETTE: 12:24:59 22 Q. I am trying to get at, Professor, your 12:24:59 23 statement here that prior to the IPO there were 12:25:02 24 indications that gray market sales were increasing 12:25:04	1 was also all the information from WDC Mackenzie, and 12:26:19 2 there was actually declining sales in Canada. 12:26:23 3 Q. Okay. Anything else? 12:26:26 4 A. No. 12:26:28 5 Q. Now, on page -- I am sorry -- 12:26:28 6 Paragraph 19 of your initial report. 12:26:37 7 MR. COLLINS: Initial, did you say? 12:26:40 8 MR. BESSETTE: Uh-huh. 12:26:42 9 BY MR. BESSETTE: 12:26:43 10 Q. Okay. The first sentence you say, 12:27:01 11 "The company's business model made it particularly 12:27:03 12 vulnerable to gray marketers." In the third 12:27:08 13 sentence, "In the long-term, the gray market is 12:27:10 14 known to be potentially detrimental to consumers and 12:27:13 15 trademark holders and the like." 12:27:18 16 Now, tell me the evidence that 12:27:20 17 supports your conclusion that Adams was particularly 12:27:23 18 vulnerable to gray marketers? 12:27:26 19 MR. COLLINS: Asked and answered. 12:27:28 20 Go ahead. 12:27:29 21 BY THE WITNESS: 12:27:29 22 A. I'll just go back to the conversation 12:27:30 23 that we had earlier, which was about how it was that 12:27:31 24 I sort of engaged in my analysis. Given the gray 12:27:36
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1 And we've already talked about that. But that gray 12:25:08 2 market could have a deleterious effect on sales. 12:25:10 3 Tell me the data or information that was available 12:25:13 4 to the company, so what indications would they have 12:25:15 5 seen to show that there could be a deleterious 12:25:19 6 effect on sales pre IPO? 12:25:23 7 MR. COLLINS: Foundation 12:25:26 8 Go ahead 12:25:28 9 BY THE WITNESS: 12:25:28 10 A Prior to the IPO, the company had, for 12:25:28 11 one, received a number of complaints, including a 12:25:31 12 series of communications from WDC Mackenzie 12:25:34 13 regarding the effects that gray marketing was having 12:25:38 14 on authorized retailers in Canada. Among those, 12:25:41 15 among I think it was internal memo, I think it was 12:25:45 16 an Adams internal memo relating what WDC Mackenzie 12:25:51 17 had stated. The company stood, I think the quote 12:25:57 18 was something like the company stood to lose 12:26:00 19 goodwill and something like 15,000 clubs worth of 12:26:04 20 sales 12:26:10 21 BY MR. BESSETTE: 12:26:10 22 Q. Anything else? 12:26:10 23 A. Yes. That's sort of a large body of 12:26:11 24 things right there. There was the complaints, there 12:26:17	1 market literature and my familiarity with the gray 12:27:41 2 market literature, I looked at the business 12:27:44 3 strategies that Adams employed and superimposed 12:27:47 4 them, sort of looked at the correlation of Adams' 12:27:53 5 business strategies with those that are known to be 12:28:00 6 particularly inviting to gray marketers 12:28:03 7 BY MR. BESSETTE: 12:28:06 8 Q. Well, in Paragraph 39 of your 12:28:06 9 rebuttal -- 12:28:08 10 MR. COLLINS: Of the rebuttal? 12:28:09 11 MR. BESSETTE: Yes. 12:28:13 12 MR. COLLINS: Give us a second to get 12:28:14 13 there, please. 12:28:15 14 MR. BESSETTE: Todd, you don't need to 12:28:15 15 say that I routinely wait. 12:28:17 16 MR. COLLINS: I appreciate it. We are 12:28:20 17 there. 12:28:25 18 BY MR. BESSETTE: 12:28:26 19 Q. You say that Adams had a unique 12:28:28 20 business model. Tell me what you mean by that. 12:28:32 21 MR. COLLINS: Well, with reference to 12:28:34 22 Paragraph 39 or just answer the question? What do 12:28:38 23 you want her to do? 12:28:40 24